

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-1367

NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2002

ANN M. SMITH
Plaintiff-Appellee,

v.

Wayne County
No. 99 CVS 2684

JERRY MELVIN SHIPMAN,
Defendant

Appeal by unnamed defendant, North Carolina Farm Bureau Mutual Insurance Company, from order entered 2 August 2001 by Judge Paul Jones in Superior Court, Wayne County. Heard in the Court of Appeals 21 August 2002.

Whitley, Jenkins & Riddle, by Charles R. Hardee and G. Wayne Hardee, for plaintiff-appellee.

Walker, Clark, Allen, Grice & Ammons, L.L.P., by Jerry A. Allen, Jr. and Gay Parker Stanley, for unnamed defendant-appellant North Carolina Farm Bureau.

Bailey & Dixon, L.L.P., by David S. Coats and David S. Wisz, for North Carolina Association of Defense Attorneys, amicus curiae.

White & Stradley, LLP, by J. David Stradley, for North Carolina Academy of Trial Lawyers, amicus curiae.

McGEE, Judge.

Plaintiff and defendant were involved in an automobile collision on 23 November 1996. Plaintiff filed this action against defendant on 15 November 1999 seeking damages for personal injuries resulting from the collision. The complaint was served on unnamed

defendant North Carolina Farm Bureau Mutual Insurance Company (Farm Bureau), plaintiff's underinsured motorist carrier. Farm Bureau filed an answer and demand for a jury trial on 27 April 2000.

Nationwide Insurance Company (Nationwide), defendant's liability insurer, tendered its liability coverage limits on or about 21 March 2001 and Farm Bureau received notice thereof on 22 March 2001. Farm Bureau advanced Nationwide's tender of liability coverage by delivering a check to plaintiff on 25 April 2001. Plaintiff filed a motion dated 14 June 2001 to compel arbitration pursuant to the terms of the Farm Bureau policy. The trial court granted plaintiff's motion for arbitration on 2 August 2001. Unnamed defendant Farm Bureau appeals. Plaintiff filed a separate motion with our Court on 1 April 2002 to dismiss the unnamed defendant's appeal as interlocutory.

Farm Bureau first argues the trial court erred in granting plaintiff's motion to compel arbitration. Farm Bureau concedes its appeal is interlocutory but contends that it is immediately appealable. "Generally, there is no right to appeal from an interlocutory order." *Darroch v. Lea*, ___ N.C. App. ___, ___, 563 S.E.2d 219, 221 (2002).

N.C. Gen. Stat. § 1-567.18(a) (2001) provides for an appeal involving arbitration from:

- (1) An order denying an application to compel arbitration made under G.S. 1-567.3;
- (2) An order granting an application to stay arbitration made under G.S. 1-567.3(b);
- (3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment or decree entered pursuant to the provisions of this Article.

"The statute does not provide for an immediate appeal from an order compelling arbitration, and this Court has expressly held 'that there is no immediate right of appeal from an order compelling arbitration.'" *Laws v. Horizon Housing, Inc.*, 137 N.C. App. 770, 771, 529 S.E.2d 695, 696 (2000) (quoting *The Bluffs, Inc. v. Wysocki*, 68 N.C. App. 284, 286, 314 S.E.2d 291, 293 (1984)); see *Red Springs Presbyterian Church v. Terminix Co.*, 119 N.C. App. 299, 301, 458 S.E.2d 270, 273 (1995); *Lee County Bd. of Education v. Adams Electrical, Inc.*, 106 N.C. App. 139, 415 S.E.2d 576 (1992); *N.C. Electric Membership Corp. v. Duke Power Co.*, 95 N.C. App. 123, 381 S.E.2d 896, *disc. review denied*, 325 N.C. 709, 388 S.E.2d 461 (1989); *The Bluffs v. Wysocki*, 68 N.C. App. 284, 314 S.E.2d 291 (1984). Farm Bureau has no right of immediate appeal from the order of the trial court requiring arbitration.

Farm Bureau contends that the order for binding arbitration prohibits it from appealing the substantive decision of the arbitration panel and thereby impairs its substantive rights absent an immediate appeal. A substantive right is "'one which will clearly be lost or irremediably adversely affected if the order is not reviewable before final judgment.'" *Turner v. Norfolk S. Corp.*, 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000) (quoting *Blackwelder v. Dept. of Human Resources*, 60 N.C. App. 331, 335, 299

S.E.2d 777, 780 (1983)). The appellant bears the burden of demonstrating that an order will adversely affect a substantial right. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 444 S.E.2d 252 (1994).

The Uniform Arbitration Act provides avenues for the confirmation, vacation, modification, or correction of arbitration awards by the courts. See, e.g., N.C. Gen. Stat. §§ 1-567.12 to .14 (2001); *The Bluffs*, 68 N.C. App. at 285, 314 S.E.2d at 293. "A dissatisfied party . . . has a right of appeal from the trial court's order or judgment. The parties thus have access to the courts." *The Bluffs*, 68 N.C. App. at 285, 314 S.E.2d at 293.

In *Darroch*, ___ N.C. App. at ___, 563 S.E.2d at 223, our Court held that an insurer did not have a right to an immediate appeal stemming from an order for binding arbitration. In that case, our Court declined to recognize any impairment to substantive rights stemming from binding arbitration. We found that the insurer had access to the courts and could file an appropriate appeal following the entry of a final order or judgment. *Id.* In the case before us, Farm Bureau has the right to appeal the trial court's decision following the entry of an arbitration order. Declining to review the order compelling arbitration at this time is appropriate and will not adversely affect Farm Bureau's right to judicial review.

Farm Bureau further argues that the order compelling arbitration creates a risk of inconsistent results. However, Farm Bureau has failed to demonstrate how inconsistent results from an arbitration would impair any substantive right absent an immediate

appeal. "North Carolina has a strong public policy favoring arbitration." *Red Springs*, 119 N.C. App. at 303, 458 S.E.2d at 273. Any doubts regarding the scope of arbitrable issues must be resolved in favor of arbitration. *Smith v. Young Moving & Storage, Inc.*, 141 N.C. App. 469, 471, 540 S.E.2d 383, 385 (2000), *aff'd*, 353 N.C. 521, 546 S.E.2d 87 (2001).

There is no impairment of Farm Bureau's substantive rights absent appellate review before a final judgment is entered in this case; therefore, there is no right of immediate appeal from the trial court's order compelling arbitration.

Farm Bureau's appeal is dismissed as interlocutory.

Dismissed.

Judges McCULLOUGH and BRYANT concur.

Report per Rule 30(e).